

2009 DRAFTING REQUEST

Bill

Received: **02/11/2009**

Received By: **pkahler**

Wanted: **As time permits**

Identical to LRB:

For: **Fred Risser (608) 266-1627**

By/Representing: **Rick Champagne**

This file may be shown to any legislator: **NO**

Drafter: **pkahler**

May Contact:

Addl. Drafters:

Subject: **Dom. Rel. - child support/maint.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Risser@legis.wisconsin.gov**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Modifications to the Uniform Interstate Family Support Act

Instructions:

See attached

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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	pkahler 07/08/2009	wjackson 08/04/2009		_____			
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ph/8F

Kahler, Pam

From: Champagne, Rick
Sent: Friday, February 06, 2009 8:16 AM
To: Kahler, Pam
Subject: Risser Drafting Request

Attachments: Short Summaries 2008.doc

Pam:

It is that time of year again when the Wisconsin Commission of Uniform Laws sets its legislative agenda for the session. The members have decided to have drafted and introduce a number of uniform laws, one of which might be yours. (Please let me know if it isn't.) It is the 2008 Amendments to the Uniform Interstate Family Support Act, which under Wisconsin law is ch. 769. The requester is Sen. Risser and the contact person in his office is Terry Tuschen. (Rep. Cullen will also want a companion bill.) Below, I've attached a hyperlink to the law, as well as a short summary of the law.

The Act:

http://www.nccusl.org/Update/Docs/Finals_NC/UIFSAamends_Final08_NC.doc

The Short Summary:



Short Summaries
2008.doc (34 K...

Thanks, Pam.

Rick

UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

(Last Amended or Revised in 2008)

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-SEVENTEENTH YEAR
IN BIG SKY, MONTANA
JULY 18 – 25, 2008

WITHOUT PREFATORY NOTE OR COMMENTS

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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

October 1, 2008

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FAMILY SUPPORT ACT (2001)**

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AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

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AMENDMENTS TO UNIFORM INTERSTATE FAMILY SUPPORT ACT (2001)

ARTICLE 1

GENERAL PROVISIONS

SECTION 101. SHORT TITLE. This ~~{Act}~~ [act] may be cited as the Uniform Interstate Family Support Act.

SECTION 102. DEFINITIONS. In this ~~{Act}~~ [act]:

(1) “Child” means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual’s parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

(2) “Child-support order” means a support order for a child, including a child who has attained the age of majority under the law of the issuing ~~State~~ state or foreign country.

(3) “Convention” means the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance, concluded at The Hague on November 23, 2007.

~~(3)~~ (4) “Duty of support” means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

(5) “Foreign country” means a country, including a political subdivision thereof, other than the United States, that authorizes the issuance of support orders and:

(A) which has been declared under the law of the United States to be a foreign reciprocating country;

(B) which has established a reciprocal arrangement for child support with this state as provided in Section 308;

(C) which has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [act];

or

(D) in which the Convention is in force with respect to the United States.

(6) "Foreign support order" means a support order of a foreign tribunal.

(7) "Foreign tribunal" means a court, administrative agency, or quasi-judicial entity of a foreign country which is authorized to establish, enforce, or modify support orders or to determine parentage of a child. The term includes a competent authority under the Convention.

(4) (8) "Home State state" means the State state or foreign country in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a [petition] or comparable pleading for support and, if a child is less than six months old, the State state or foreign country in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

(5) (9) "Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this State state.

(6) (10) "Income-withholding order" means an order or other legal process directed to an obligor's [employer] [or other debtor], as defined by [the income-withholding law of this State state], to withhold support from the income of the obligor.

(7) "Initiating State means a State from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding State under this [Act] or a law or procedure substantially similar to this [Act]."

(8) (11) "Initiating tribunal" means the authorized tribunal of a State state or foreign country in an initiating State from which a [petition] or comparable pleading is forwarded or in which a [petition] or comparable pleading is filed for forwarding to another state or foreign country.

(12) “Issuing foreign country” means the foreign country in which a tribunal issues a support order or a judgment determining parentage of a child.

(9) (13) “Issuing State state ” means the State state in which a tribunal issues a support order or renders a judgment determining parentage of a child.

(10) (14) “Issuing tribunal” means the tribunal of a state or foreign country that issues a support order or renders a judgment determining parentage of a child.

(11) (15) “Law” includes decisional and statutory law and rules and regulations having the force of law.

(12) (16) “Obligee” means:

(A) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order ~~has been issued~~ or a judgment determining parentage of a child has been ~~rendered~~ issued;

(B) a foreign country, State state, or political subdivision of a state to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee in place of child support;
or

(C) an individual seeking a judgment determining parentage of the individual’s child; or

(D) a person that is a creditor in a proceeding under [Article] 7.

(13) (17) “Obligor” means an individual, or the estate of a decedent that:

(A) ~~who~~ owes or is alleged to owe a duty of support;

(B) ~~who~~ is alleged but has not been adjudicated to be a parent of a child; ~~or~~

(C) ~~who~~ is liable under a support order; or

(D) is a debtor in a proceeding under [Article] 7.

(18) “Outside this state” means a location in another state or a country other than the United States, whether or not the country is a foreign country.

(14) (19) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government; or governmental subdivision, agency, or instrumentality, public corporation or any other legal or commercial entity.

(15) (20) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) (21) “Register” means to [record; file] in a tribunal of this state a support order or judgment determining parentage of a child issued in another state or a foreign country in the [appropriate location for the recording or filing of foreign judgments generally or foreign support orders specifically].

(17) (22) “Registering tribunal” means a tribunal in which a support order or judgment determining parentage of a child is registered.

(18) (23) “Responding State state” means a State state in which a proceeding [petition] or comparable pleading for support or to determine parentage of a child is filed or to which a proceeding [petition] or comparable pleading is forwarded for filing from an initiating another State state or a foreign country under this [Act] or a law or procedure substantially similar to this [Act].

(19) (24) “Responding tribunal” means the authorized tribunal in a responding State state or foreign country.

(20) (25) “Spousal-support order” means a support order for a spouse or former spouse of the obligor.

(21) (26) “State” means a State state of the United States, the District of Columbia,

Puerto Rico, the United States Virgin Islands, or any territory or insular possession ~~subject to~~ under the jurisdiction of the United States. The term includes: ~~(A) an Indian nation or tribe; and~~

~~(B) a foreign country or political subdivision that:~~

~~(i) has been declared to be a foreign reciprocating country or political subdivision under federal law;~~

~~(ii) has established a reciprocal arrangement for child support with this State as provided in Section 308; or~~

~~(iii) has enacted a law or established procedures for the issuance and enforcement of support orders which are substantially similar to the procedures under this [Act].~~

~~(22)~~ (27) “Support enforcement agency” means a public official, governmental entity, or private agency authorized to seek:

(A) seek enforcement of support orders or laws relating to the duty of support;

(B) seek establishment or modification of child support;

(C) request determination of parentage of a child;

(D) ~~location of~~ attempt to locate obligors or their assets; or

(E) request determination of the controlling child-support order.

~~(23)~~ (28) “Support order” means a judgment, decree, order, decision, or directive, whether temporary, final, or subject to modification, issued ~~by a tribunal in a state or foreign country~~ for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, retroactive support, or reimbursement for financial assistance provided to an individual obligee in place of child support. ~~and~~ The term may include related costs and fees, interest, income withholding, automatic adjustment, reasonable attorney’s fees, and other relief.

~~(24)~~ (29) “Tribunal” means a court, administrative agency, or quasi-judicial entity

authorized to establish, enforce, or modify support orders or to determine parentage of a child.

**SECTION 103. STATE TRIBUNAL OF STATE AND SUPPORT
ENFORCEMENT AGENCY.**

(a) The [court, administrative agency, or quasi-judicial entity, or combination] [is the tribunal] [are the tribunals] of this ~~State~~ state.

(b) The [public official, governmental entity, or private agency] [is] [are] the support enforcement [agency] [agencies] of this state.

***Legislative Note:** If a state has more than one entity serving as a tribunal or support enforcement agency, the plural text choice should be selected.*

SECTION 104. REMEDIES CUMULATIVE.

(a) Remedies provided by this [~~Aet~~] [act] are cumulative and do not affect the availability of remedies under other law, ~~including or~~ the recognition of a support order ~~of a foreign country or political subdivision~~ on the basis of comity.

(b) This [~~Aet~~] [act] does not:

(1) provide the exclusive method of establishing or enforcing a support order under the law of this ~~State~~ state; or

(2) grant a tribunal of this ~~State~~ state jurisdiction to render judgment or issue an order relating to [child custody or visitation] in a proceeding under this [~~Aet~~] [act].

***Legislative note:** If a state has more than one entity serving as a tribunal or support enforcement agency, the plural text choice should be selected.*

**SECTION 105. APPLICATION OF [ACT] TO RESIDENT OF FOREIGN
COUNTRY AND FOREIGN SUPPORT PROCEEDING.**

(a) A tribunal of this state shall apply [Articles] 1 through 6 and, as applicable, [Article] 7, to a support proceeding involving:

(1) a foreign support order;

(2) a foreign tribunal; or

(3) an obligee, obligor, or child residing in a foreign country.

(b) A tribunal of this state that is requested to recognize and enforce a support order on the basis of comity may apply the procedural and substantive provisions of [Articles] 1 through 6.

(c) [Article] 7 applies only to a support proceeding under the Convention. In such a proceeding, if a provision of [Article] 7 is inconsistent with [Articles] 1 through 6, [Article] 7 controls.



ARTICLE 2

JURISDICTION

SECTION 201. BASES FOR JURISDICTION OVER NONRESIDENT.

(a) In a proceeding to establish or enforce a support order or to determine parentage of a child, a tribunal of this ~~State~~ state may exercise personal jurisdiction over a nonresident individual [or the individual's guardian or conservator] if:

(1) the individual is personally served with [citation, summons, notice] within this ~~State~~ state;

(2) the individual submits to the jurisdiction of this ~~State~~ state by consent in a record, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this ~~State~~ state;

(4) the individual resided in this ~~State~~ state and provided prenatal expenses or support for the child;

(5) the child resides in this ~~State~~ state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this ~~State~~ state and the child may have been conceived by that act of intercourse;

(7) [the individual asserted parentage of a child in the [putative father registry] maintained in this ~~State~~ state by the [appropriate agency]; or

(8)] there is any other basis consistent with the constitutions of this ~~State~~ state and the United States for the exercise of personal jurisdiction.

(b) The bases of personal jurisdiction set forth in subsection (a) or in any other law of this ~~State~~ state may not be used to acquire personal jurisdiction for a tribunal of ~~the~~ this ~~State~~ state to

modify a child-support order of another ~~State~~ state unless the requirements of Section 611 ~~or 615~~ are met, or, in the case of a foreign support order, unless the requirements of Section 615 are met.

SECTION 202. DURATION OF PERSONAL JURISDICTION. Personal jurisdiction acquired by a tribunal of this ~~State~~ state in a proceeding under this ~~[Act]~~ [act] or other law of this ~~State~~ state relating to a support order continues as long as a tribunal of this ~~State~~ state has continuing, exclusive jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 205, 206, and 211.

SECTION 203. INITIATING AND RESPONDING TRIBUNAL OF STATE. Under this ~~[Act]~~ [act], a tribunal of this ~~State~~ state may serve as an initiating tribunal to forward proceedings to a tribunal of another State state, and as a responding tribunal for proceedings initiated in another ~~State~~ state or a foreign country.

SECTION 204. SIMULTANEOUS PROCEEDINGS.

(a) A tribunal of this ~~State~~ state may exercise jurisdiction to establish a support order if the ~~[petition]~~ or comparable pleading is filed after a pleading is filed in another ~~State~~ state or a foreign country only if:

(1) the ~~[petition]~~ or comparable pleading in this ~~State~~ state is filed before the expiration of the time allowed in the other ~~State~~ state or the foreign country for filing a responsive pleading challenging the exercise of jurisdiction by the other ~~State~~ state or the foreign country;

(2) the contesting party timely challenges the exercise of jurisdiction in the other ~~State~~ state or the foreign country; and

(3) if relevant, this ~~State~~ state is the home ~~State~~ state of the child.

(b) A tribunal of this ~~State~~ state may not exercise jurisdiction to establish a support order

if the [petition] or comparable pleading is filed before a [petition] or comparable pleading is filed in another ~~State~~ state or a foreign country if:

(1) the [petition] or comparable pleading in the other ~~State~~ state or foreign country is filed before the expiration of the time allowed in this ~~State~~ state for filing a responsive pleading challenging the exercise of jurisdiction by this ~~State~~ state;

(2) the contesting party timely challenges the exercise of jurisdiction in this ~~State~~ state; and

(3) if relevant, the other ~~State~~ state or foreign country is the home ~~State~~ state of the child.

SECTION 205. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY CHILD-SUPPORT ORDER.

(a) A tribunal of this ~~State~~ state that has issued a child-support order consistent with the law of this ~~State~~ state has and shall exercise continuing, exclusive jurisdiction to modify its child-support order if the order is the controlling order and:

(1) at the time of the filing of a request for modification this ~~State~~ state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) even if this ~~State~~ state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that the tribunal of this ~~State~~ state may continue to exercise jurisdiction to modify its order.

(b) A tribunal of this ~~State~~ state that has issued a child-support order consistent with the law of this ~~State~~ state may not exercise continuing, exclusive jurisdiction to modify the order if:

(1) all of the parties who are individuals file consent in a record with the tribunal

of this ~~State~~ state that a tribunal of another ~~State~~ state that has jurisdiction over at least one of the parties who is an individual or that is located in the ~~State~~ state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or

(2) its order is not the controlling order.

(c) If a tribunal of another ~~State~~ state has issued a child-support order pursuant to {the Uniform Interstate Family Support Act} or a law substantially similar to that Act which modifies a child-support order of a tribunal of this ~~State~~ state, tribunals of this ~~State~~ state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other ~~State~~ state.

(d) A tribunal of this ~~State~~ state that lacks continuing, exclusive jurisdiction to modify a child-support order may serve as an initiating tribunal to request a tribunal of another ~~State~~ state to modify a support order issued in that ~~State~~ state.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

SECTION 206. CONTINUING JURISDICTION TO ENFORCE CHILD-SUPPORT ORDER.

(a) A tribunal of this ~~State~~ state that has issued a child-support order consistent with the law of this ~~State~~ state may serve as an initiating tribunal to request a tribunal of another ~~State~~ state to enforce:

(1) the order if the order is the controlling order and has not been modified by a tribunal of another ~~State~~ state that assumed jurisdiction pursuant to the {Uniform Interstate Family Support Act}; or

(2) a money judgment for arrears of support and interest on the order accrued before a determination that an order of a tribunal of another ~~State~~ state is the controlling order.

(b) A tribunal of this ~~State~~ state having continuing jurisdiction over a support order may

act as a responding tribunal to enforce the order.

SECTION 207. DETERMINATION OF CONTROLLING CHILD-SUPPORT ORDER.

(1c) (a) If a proceeding is brought under this ~~[Act]~~ [act] and only one tribunal has issued a child-support order, the order of that tribunal controls and must be ~~so~~ recognized.

(1m) (b) If a proceeding is brought under this ~~[Act]~~ [act], and two or more child-support orders have been issued by tribunals of this ~~State~~ state, another ~~State~~ state, or a foreign country with regard to the same obligor and same child, a tribunal of this ~~State~~ state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and must be recognized:

(a) (1) If only one of the tribunals would have continuing, exclusive jurisdiction under this ~~[Act]~~ [act], the order of that tribunal controls ~~and must be so recognized~~.

(b) (2) If more than one of the tribunals would have continuing, exclusive jurisdiction under this ~~[Act]~~ [act]:

(A) an order issued by a tribunal in the current home ~~State~~ state of the child controls; ~~but or~~

(B) if an order has not been issued in the current home ~~State~~ state of the child, the order most recently issued controls.

(c) (3) If none of the tribunals would have continuing, exclusive jurisdiction under this ~~[Act]~~ [act], the tribunal of this ~~State~~ state shall issue a child-support order, which controls.

(1r) (c) If two or more child-support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this ~~State~~ state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under subsection (b). The request may be

filed with a registration for enforcement or registration for modification pursuant to [Article] 6, or may be filed as a separate proceeding.

(14) (d) A request to determine which is the controlling order must be accompanied by a copy of every child-support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.

(2) (e) The tribunal that issued the controlling order under subsection (a), (b), or (c) has continuing jurisdiction to the extent provided in Section 205 or 206.

(3) (f) A tribunal of this ~~State~~ state that determines by order which is the controlling order under subsection (b)(1) or (2) or (c), or that issues a new controlling order under subsection (b)(3), shall state in that order:

(1) the basis upon which the tribunal made its determination;

(2) the amount of prospective support, if any; and

(3) the total amount of consolidated arrears and accrued interest, if any, under all

of the orders after all payments made are credited as provided by Section 209.

(4) (g) Within [30] days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.

(5) (h) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section must be recognized in proceedings under this ~~{Act}~~ [act].

SECTION 208. CHILD-SUPPORT ORDERS FOR TWO OR MORE OBLIGEEES.

In responding to registrations or [petitions] for enforcement of two or more child-support orders in effect at the same time with regard to the same obligor and different individual obligees, at least one of which was issued by a tribunal of another ~~State~~ state or a foreign country, a tribunal of this ~~State~~ state shall enforce those orders in the same manner as if the orders had been issued by a tribunal of this ~~State~~ state.

SECTION 209. CREDIT FOR PAYMENTS. A tribunal of this ~~State~~ state shall credit amounts collected for a particular period pursuant to any child-support order against the amounts owed for the same period under any other child-support order for support of the same child issued by a tribunal of this state, ~~or another State~~ state, or a foreign country.

SECTION 210. APPLICATION OF [ACT] TO NONRESIDENT SUBJECT TO PERSONAL JURISDICTION. A tribunal of this ~~State~~ state exercising personal jurisdiction over a nonresident in a proceeding under this ~~[Act]~~ [act], under other law of this ~~State~~ state relating to a support order, or recognizing a foreign support order ~~of a foreign country or political subdivision on the basis of comity~~ may receive evidence from ~~another~~ outside this State state pursuant to Section 316, communicate with a tribunal ~~of another~~ outside this State state pursuant to Section 317, and obtain discovery through a tribunal ~~of another~~ outside this State state pursuant to Section 318. In all other respects, [Articles] 3 through 6 ~~7~~ do not apply, and the tribunal shall apply the procedural and substantive law of this ~~State~~ state.

SECTION 211. CONTINUING, EXCLUSIVE JURISDICTION TO MODIFY SPOUSAL-SUPPORT ORDER.

(a) A tribunal of this ~~State~~ state issuing a spousal-support order consistent with the law of this ~~State~~ state has continuing, exclusive jurisdiction to modify the spousal-support order throughout the existence of the support obligation.

(b) A tribunal of this ~~State~~ state may not modify a spousal-support order issued by a tribunal of another ~~State~~ state or a foreign country having continuing, exclusive jurisdiction over that order under the law of that ~~State~~ state or foreign country.

(c) A tribunal of this ~~State~~ state that has continuing, exclusive jurisdiction over a spousal-support order may serve as:

(1) an initiating tribunal to request a tribunal of another ~~State~~ state to enforce the spousal-support order issued in this ~~State~~ state; or

(2) a responding tribunal to enforce or modify its own spousal-support order.